Case Number: 1501097/2013
1501860/2012
3400176/2014

EMPLOYMENT TRIBUNALS

Claimant: Dr C Fanutti

Respondent: University of East Anglia

HEARD AT: Huntingdon ET **ON:** 3rd and 8th June 2016
13th January 2017

BEFORE: **Employment Judge D Moore**

MEMBERS: Mr C Davie
Mrs L Gaywood

REPRESENTATION

For the Claimant: Dr Fanutti (In person)
Mr Knowles (Mackenzies Friend)

For the Respondent: Mr Naughton (Counsel)

JUDGMENT ON A RECONSIDERATION

1. The Tribunal confirms its finding that the Claimant's dismissal was not an act of discrimination.

REASONS

1. On the 23rd December 2015 the Claimant applied for a consideration of parts of the Tribunal's judgment promulgated on the 10th December 2015.

2. Two points were raised in that letter 1) a request that we reconsider the complaints that we had ruled to be out of time and 2) our finding in respect of the reason for dismissal. We found the dismissal to be unfair but not discriminatory. The application in respect of the first of these points was refused on the ground that it had no reasonable prospect of success. The application was granted in respect of the second ground and the matter was listed to be heard on the 3rd June 2016. The pertinent point is whether on reconsideration we should alter our finding that the dismissal was not discriminatory. The Claimant appears to have misunderstood the nature of this reconsideration and considers it to be an opportunity to effectively re-run, if not all, the major part of her extensive case.

4. It is trite law that where (as in the present case) a party has had the opportunity to adduce evidence and advance argument, it is not ordinarily in the interests of justice to permit the case to be run again with the wisdom of hindsight. As recently confirmed by the EAT in Outasight VB Ltd v Brown (2014) UKEAT/0253/14/LA; such discretion as is allowed by the interests of justice must be exercised judicially; this means having regard not only to the interests of the party seeking the review but also to the interests of the other party and to the public interest requirement that there should as far as possible be finality to the litigation. The Claimant argued her case extensively at the hearing and whilst she has reminded us on a number of occasions that she is not a lawyer she did have the assistance of her Mackenzie's Friend throughout and was afforded the opportunity to consult with him when she chose. It was however her responsibility to present her case and put the relevant evidence before us. Ours is not an inquisitorial role (McNicol v Balfour Beatty Rail Maintenance Ltd (2002) ICR CA.) and as the learned Judge pointed out in Outasight reconsideration is not an opportunity to identify from the judgment a different case to that which was presented to us and then to argue it. Given her mistaken view the Claimant prepared and submitted a great many documents. Given that much of it appears not to be relevant to the point before us we have indicated that we have not read the submitted documentation in its entirety but would of course listen carefully to any arguments and read any documents that we were referred to that were relevant to the point with which we were concerned.

5. Turning to the matter that is before us. The Claimant was dismissed (formally) by the Vice Chancellor of the University, Professor Acton. The evidence that he did so following a recommendation to this effect in a report submitted to him by a committee convened in accordance with the University's statutes and chaired by Professor Warnock was unchallenged.

6. The Claimant's argument that the dismissal was an act of discrimination was, in essence, a theory of 'chain reaction'. Professor Ward (who did not participate in the decision made by Professor Warnock's committee

or Professor Acton's decision to dismiss preferred charges against the Claimant under the University's statutes. She contended that his reasons for so doing were discriminatory and therefore this, of itself, tainted the whole process. We did not and do not accept that argument. We did not find as a fact that preferment of charges was an act of discrimination on Professor Ward's part. He was charged with the task of investigating some of the Claimants grievances. He arrived at the conclusion that her complaints were false and made for the purpose of 'bullying' her line managers into letting her choose what work she would or would not do. He found her behaviour towards senior members of the academic staff to be disrespectful and unrivalled in his long experience of academia. We accepted that he was shocked we heard evidence from him both in chief and under cross examination and found him to be a wholly reliable witness. We unanimously found as a fact that his reason for preferring charges solely related to his concerns about the Claimant's behaviour and that they were not influenced by or attributable to and discriminatory motive or element. Turning to the second limb of the claimant's argument; we did not and do not accept that this automatically 'tainted' the resulting process. We found Professor Warnock's committee (drawn substantially from other and different departments of the university) to have exercised their independent judgment; finding certain of the charges proved on the evidence of witnesses to the actual events concerned called before them. By virtue of the University Statutes the officer empowered to actually effect the dismissal was the Vice Chancellor and we found as fact that he dismissed on the strength of the findings and recommendation made by Professor Warnock's committee. The Claimant did not put to those who determined that she was dismissed they had colluded or conspired with Professor Ward and we found no evidence whatsoever that they had not approached their task bona fide. In determining the reason for the dismissal we have to ascertain what the true reason is in the mind of the employer. We found that reason to be a genuine belief that the Claimant by her conduct was in breach of certain provisions of the University's statutes.

7. The Claimant further claimed that her dismissal was an act of victimisation. The protected acts relied upon were the issue of the first two tribunal claims in the series. We did not find this ground to be established by the facts and our decision on this point also rested on the findings we have referred to above. We did not find Professor Ward to be influenced by the fact that the complaints the Claimant was making included discrimination. He was exercised by his conclusion that they were false, and his conclusions about her behaviour towards members of her line management structure. As we have noted we have found as fact that Professor Warnock's committee conducted a proper and independent hearing.

8. In order to address the arguments now before us. It is right to note that the Claimant was exercised at a preliminary hearing (not before us) and again at the outset of the hearing before us by a desire to adduce

evidence of a without prejudice discussion between her then union representative and a member of the Respondent's HR staff. Aside from the normal considerations pertaining to such material its relevance was questionable given that the matter that she now raises namely, that the reason for her dismissal was her disinclination to settle, does not feature in her schedule of complaints that by amendment became her particulars of claim.

9. Ultimately and on the basis that it was a relatively benign matter, the Respondents waived privilege. In essence there was a discussion between the Claimant's union representative and a member of the Human Resources Department about her pre-dismissal claims. A proposal or suggestion was put to the Union Representative which was passed on to the Claimant. In very broad summary it appears to have recognised the Claimant's evident dissatisfaction and the long history of tension between her and her line managers that had followed her change of contract from a research role to a teaching role. The idea mooted was a financial accommodation that would enable her to seek a post more to her liking elsewhere. She rejected it and 'parted company' with her representative. It was not a point pursued in cross examination of those concerned in the decision to dismiss and thus it failed to achieve even a potential argument of a predetermined decision to dismiss. At its highest it showed no more than the Union Representative and the member of the HR staff fulfilling their commonplace function of exploring potential resolutions to a dispute. There was not a cohesive argument in respect of its relevance to any of the pleaded complaints in submissions. As she rightly notes we did not refer to the matter in our Judgment. We were not obliged to do so. As is provided by the Court of Appeal in Meek v City of Birmingham District Council (1987) IRLR 250 it is not incumbent upon us to produce 'an elaborate formulistic and refined piece of legal draughtsmanship. We have to give an outline of the story which had given rise to the complaint(s), a summary of our factual conclusions and a statement of the reasons which led us to the conclusions we made on those facts. We are required to reach a conclusion on the relevant statutory tests must consider the relevant facts but need only refer to the important or controversial points. We do not have to decide every issue of fact. (High Table v Horst Ltd (1998) ICR 409). The point started as one of little or no obvious relevance and the Claimant did not by sound argument or pursuit in cross examination establish this matter as being significant or even pertinent to the statutory rests under consideration. In terms of potential relevance it could have been developed into an argument that there was a predetermined decision to dismiss but that was not pursued. In any event this would have gone to the fairness of the dismissal and we found the dismissal to be unfair. We did not mention it because its relevance had not been established and it was not pertinent to our decision. The Claimant returns to the point in this reconsideration but it remains unclear why she contends this point should take us to a different

conclusion in respect of the reason for dismissal. It seems that she is concerned by our reference to the reason for the dismissal being a reason related to her conduct. That is what we found the Respondent's genuine belief to be (the question of whether they reasonably held that belief falls within the complaint of unfair dismissal that we decided in her favour. We have reminded her that we did find the dismissal to be unfair and her contention appears now to be that a finding of unfair dismissal did not reflect the gravity of the situation and that the point was indicative that we should find it to be 'very unfair'. That of course is not a finding that can be made under the statutory provisions that pertain. Certain factors, for example the presence or absence of contributory fault may influence the size of the award for compensation but that is a point in the case that we have not yet reached we having accepted at the outset of the case that all matters pertaining to remedy should be put over until after our decision of the merits of the case.

10. It has however been instrumental in delaying our decision. After the hearing in June we became aware of the EAT's decision in Faithorn Farrell Timms LLP v Bailey which related to S:111A of the Employment Rights Act 1996 which came into force on the 29th July 2013. We referred this back to the parties since the discussions in question may have spanned that date. We anticipated the matter could be addressed in a short note. The Claimant sought a further hearing but has at that hearing confirmed the Respondents assertion that the discussions about which we heard pre-dated the 29th July 2013 in their entirety. This was the only point that was re-listed before us.

11. In conclusion: The application for reconsideration was granted on the basis that I (as the Judge concerned with that application) found it difficult to follow the Claimant's grounds. I concluded that my discretion in respect of whether it was just and equitable to allow it to proceed was broad enough to encompass this situation and to afford the Claimant the opportunity to argue her point. There has been no application to raise points additional to the one permitted to proceed. As we have noted earlier in our decision the Claimant mistook the nature of the process she had invoked and the reality is that we have heard no relevant fresh argument on the point in question. We have however given careful consideration to our decision and we remain persuaded by the evidence that as before us that Professor Ward did not prefer charges for discriminatory reasons and that in the evidence pertaining to those charges was heard by an independent panel who made their findings on that evidence. We confirm our decision that the dismissal in this case albeit unfair was not discriminatory.

Employment Judge D Moore, Huntingdon
Date: 01 March 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS